

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

FILED BY SP D.C.  
05 APR 19 PM 1:57  
ROBERT R. Di TROIO  
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FOREST COVE MANOR, INC., )  
Plaintiff, )  
VS. ) No. 04-1119-T-An  
VICKI BUTLER, et al., )  
Defendant. )

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ORDER GRANTING DEFENDANT VERNON'S  
MOTION TO PROCEED *IN FORMA PAUPERIS*  
AND DENYING MOTION FOR APPOINTMENT OF COUNSEL

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Defendant Guy Randy Vernon has filed a motion to be allowed to proceed in this matter *in forma pauperis* and a motion for the appointment of counsel. Defendant has presented an affidavit which states that he receives \$850 - \$900 per month in disability and his wife earns \$1200 per month. Defendant has approximately \$80 in a savings account, \$3000 equity in his truck, and \$4000 equity in his furniture and appliances. Defendant's right to \$20,000 in a fund controlled by Plaintiff, Defendant's former employer, appears to be disputed, and he does not have access to these funds.

Defendant makes a monthly payment of \$1190 to the Chapter 13 Trustee and a \$50 monthly credit card payment. His utility and phone bills per month total \$300. Beginning in June 2005, Defendant's wife will begin paying \$300 per month for health insurance for

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(45)

her and their minor child, and Defendant will pay \$80 per month for Medicare coverage.

The *in forma pauperis* statute authorizes courts to allow "the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor." 28 U.S.C. § 1915(a). Because Defendant's expenses exceed his income, Defendant's motion to proceed *in forma pauperis* is GRANTED.

Defendant also seeks the appointment of counsel. The motion is DENIED for the following reasons.

Section 1915(d) of Title 28 provides as follows:

The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.

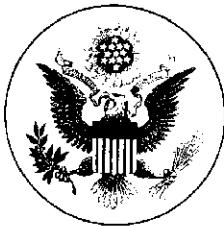
28 U.S.C. § 1915(d). While a court has a duty to appoint counsel for an indigent criminal defendant in accordance with his constitutional right to counsel, the court in a civil proceeding has only the statutory authority to "request" counsel for a "person unable to employ counsel." Bunton v. Englemyre, 557 F. Supp. 1, 4 (E.D. Tenn. 1981); see Moss v. Thomas, 299 F.2d 729, 730 (6<sup>th</sup> Cir. 1962). The court will exercise this statutory power only in exceptional cases. Bunton, 557 F. Supp. at 4. However, "§ 1915(d) does not authorize the federal courts to make coercive appointments of counsel" to represent indigent civil litigants. Mallard v. United States District Court for the Southern District of Iowa, 490 U.S.

296, 310 (1989). Generally, a court will only appoint counsel in exceptional circumstances. Willett v. Wells, 469 F. Supp. 748, 751 (E.D. Tenn. 1977).

A review of the complaint indicates that the case is not so complex that the court should exercise its discretion to appoint counsel at this time. Defendant does not appear to have more exceptional circumstances than other litigant defending a civil action. See Willett v. Wells, 469 F. Supp. 748, 751 (E.D. Tenn. 1977), aff'd, 595 F.2d 1227 (1979). Consequently, the court DENIES Defendant's motion for the appointment of counsel.

IT IS SO ORDERED.

*James D. Todd*  
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JAMES D. TODD  
UNITED STATES DISTRICT JUDGE  
*19 April 2005*  
\_\_\_\_\_  
DATE



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Honorable James Todd  
US DISTRICT COURT